Remarks

Claims 11-30 are pending in the application following entry of this Amendment. Claims 1-10 have been canceled. Claims 11 and 30 are the only independent claims pending.

Each of the Examiner's objections or rejections is addressed below in the order they were presented in the Office Action.

The provisional rejection on the ground of a potential for double patenting is acknowledged for US serial no. 10/843, 257 (Attorney Docket D1815-00113). The Examiner's telephone confirmation of the correct US serial number is gratefully acknowledged.

Objection is made herein to the provisional rejection based on the grounds that the claims of the present application are obvious variations of claims in another application of the Applicant.

The claims in said another application have not received a Notice of Allowability, or even an examination. Thus, conclusions in an Official Action herein, which affect patentability of the claims of said another application should not be made outside of the prosecution history of said another application.

Applicant's claims herein may not be subject to a provisional rejection based on claims in a pending application that could become prior art solely when patented in the future. Similarly, the provisional rejection herein should not be based on claims in Applicant's other pending application that could become judicially qualified as a ground of rejection solely when patented in the future. Withdrawal of the provisional rejection is requested.

Rejection Pursuant to 35 U.S.C. § 103(a) Over Cordell (US 6,274,520) in view of Martz (US 6,071,834) and Brunka (US 5,733,824)

Each of Applicant's claims 11 and 39 recites a film and an outer layer or layers combined with a reinforcement layer (antecedent basis in paragraph [0008], for example).

The rejection refers to a five ply fabric of Cordell, US 6,274,520, having a needle punch soaker 14, or high loft batting soaker (column 3, lines 45-51).

The rejection directs attention to a breathable film (column 3, lines 52-56), that is disclosed as either a polyester or acrylic material. The rejection states. "The layer next to the scrim layer can be a breathable film (column 3, line 52-56). The rejection is incorrect for interpreting a layer as being a scrim layer. Instead, the breathable film is a layer next to the needle punch soaker 14 that comprises (column 3, lines 45-51) a high loft batting soaker made from fibers that are punched into a scrim. The soaker 14 must have the intrinsic property of wicking away and absorbing body fluids, as expressly stated, according to the patented invention (column 3, lines 36-40). "The fabric 10 must have the intrinsic property of wicking away and absorbing any body fluids deposited by an infant lying on or inadvertently covering one's mouth with the wet sheet covering [i.e., a mattress covering (column 4 line 45-46]." Thus, the high loft batting soaker is unpredictable for serving as the reinforcement layer, as recited in Applicant's claims.

The stated essence of the patented invention of Cordell is to perform wicking and absorbing body fluids. The soaker layer 14, and an identical layer 18, are the only layers that would perform such wicking and absorbing body fluids, thus, to fulfill the stated, essence of the patented invention. The layer 14 and the layer 18 are soaker layers, which would not teach Applicant's reinforcing layer, according to Applicant's claims. Applicant's claims recite a reinforcing layer providing tear strength and water vapor permeability (antecedent basis at paragraph [0008], for example). Since the soaker layer 14 of Cordell performs wicking and absorbing body fluids, Cordell can not teach Applicant's recited invention of a reinforcing layer.

Further, Applicant's invention is recited as being breathable throughout. Since the soaker layer 14 of Cordell performs wicking and absorbing body fluids, the soaker layer 14 fills with absorbed fluids, and, thus, Cordell can not teach Applicant's recited invention, as being breathable throughout. Using the polyurethane film of Martz in the waterproof fabric of Cordell, would not change the wicking and absorbing of fluids of the Cordell fabric. Thus, the combination of Martz would not make the Cordell fabric breathable throughout, as claimed by Applicant's claims 11 and 30.

The Rejection states, "It would have been obvious .... to have used the polyurethane film of Martz in the waterproof fabric of Cordell, motivated by the desire to create a fabric having increased water vapor permeability. However, the stated essence of the invention of Cordell is to perform wicking away and absorbing body fluids. The essence of the invention of Cordell, involves wicking and absorption of fluids, which can not involve vapor permeability of the fabric throughout. Thus, Applicant's claimed composite that is vapor permeable throughout avoids the combination of references Cordell in view of Martz.

Further, Martz teaches a mesh between the polyurethane film and an outer layer. The polyurethane film of Martz is exposed on the exterior of the mesh. Thus, the outer layer can not protect the polyurethane film.

Further, a recited coating on Applicant's reinforcing layer reduces wicking at cut edges of the mesh (antecedent basis at paragraph [0008], for example).

Further, the Rejection states that the reference, Brunka et al., discloses "hand-tearable barrier laminates," a PVC coating and fire resistant additives. The Rejection states, "It also would have been obvious to have used the PVC coating and fire resistant additives of Brunka et al. in the fabric of Cordell, motivated by the desire to create a fabric having increased strength, water resistance, tear properties, weatherability, and fire resistance." However, since Brunka et al. discloses a hand-tearable article, such would not motivate or teach a person to modify an article in the prior art for tear strength.

Further, if Brunka et al. teaches a hand tearable article with its attendant "tear properties," then Brunka et al. would not teach Applicant's recital of a reinforcing layer providing tear strength.

Further, Brunka et al. states, at column 2 lines 14-19, the "present laminate" ... "more readily accepts water or solvent based inks and fire resistant additives." Thus, Brunka et al. teaches a laminate that accepts water, and solvent based fire resistant additives, whereas, Applicant's invention is substantially impermeable to liquid water. Further, Applicant's invention claims a fire resistant coating on a recited mesh, while Brunka et al. does not teach a coating, but states that a laminate itself accepts water, and fire resistant additives. Further, Brunka et al. does not teach a fire resistant coating on a mesh.

Rejection of claim 8, Pursuant to 35 U.S.C. § 103(a) Over Cordell (US 6,274,520) in view of Martz (US 6,071,834) and Brunka et al. (US 5,733,824) and Wevers et al. (US 2005/0106965)

The rejection states that specific polyester fibers in Wevers et al. can be polyethylene terephthalate [0228]. Applicant's claims contain patentable subject matter over the combination of Cordell, Martz and Brunka et al., as discussed above, and thus distinguishes over the addition of polyethylene terephthalate by Wevers et al. Further, Applicant's claims distinguish over the teachings of Wevers et al. beyond the disclosure of polyethylene terephthalate.

Applicant's invention is novel in that the reinforcement layer provides puncture and tear resistance, which allows the outer layer or layers to be porous, and open structures. In the prior art structures, the surface layers are required to impart puncture and tear resistance, which are necessarily, relatively closed, low porosity layers that restrict breathability of the laminate.

Another feature of the present invention is that the thermoplastic breathable film can be thermally laminated to both the reinforcing layer and the surface web or nonwoven surface layer. The adhesion is particularly strong. No adhesive is needed. Further, unexpectedly, the liquid barrier properties are not compromised, since a breach of the contiguous barrier is avoided.

The Brunka et al. invention is treated with a resin, which does not provide a contiguous waterproofing layer as recited by Applicant's claims. The resin in combination with disclosed cellulose fibers would limit long term water resistance to standing water. The hand tearable feature, as well as, would be ineffective to resist standing water pressures. Applicant's invention resists and supports flowing or standing water, such as, required by roofing underlayment for inclined or flat roofs.

Summary

No single composite has such properties that it can fulfill all requirements in the many different applications for multilayer composites. Therefore, the absorbing structure of Cordell and the non-protected film of Martz would not teach Applicant's claimed composite that is breathable throughout, despite being laminated, and that protects a recited film.

In view of the amendments and the Remarks supporting patentability, allowance of the application is requested.

The Examiner is invited to contact the undersigned, at the Examiner's convenience, to resolve any issues or to request any assistance in advancing the prosecution of the application.

Respectfully submitted,

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August 30, 2005
(Date)

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